

NOTE: This document is intended for internal use by the Clerk's Office staff. The summary below may not be comprehensive and is intended as a guide to assist persons in computing due dates for responsive pleadings. Counsel and pro se litigants should not rely on the contents of this document and are responsible to consult the Local Rules and Rules of Civil and Criminal Procedure to determine the responsive pleading deadlines in their cases.



FEDERAL AND LOCAL RULE TIME-COMPUTATION AMENDMENTS

The amendments to the federal court time-computation rules, Civil Rule 6 and Criminal Rule 45, take effect on December 1, 2009. Below is a brief explanation of the amendments to those rules as well as a list of both federal and local rules that have also been amended in response to the provisions of the new time-computation rules.

The pre-amendment time-computation rules exclude intermediate weekends and holidays when the time period is 11 days or less. Fed. R. Civ. P. 6 (a)(2); Fed. R. Crim. P. 45 (a)(2). The amended rules eliminate this exclusion and count all days in any time period. According to the Judicial Conference Committee on Rules of Practice and Procedure (JCCRPP), the purpose of this amendment is to create a consistent and simple mechanism for counting days - namely that "days are days" and every day in a period will count. The amended rules maintain the additional three (3) day mailing rule contained in Fed. R. Civ. P. 6(d).¹

The simple "days are days" approach to computing deadlines under the amended rules would have the effect of shortening current periods of less than 11 days. As a result, virtually all short periods in the federal rules, and many contained in the local rules, were lengthened to offset this change in the computation method — 5-day periods became 7-day periods and 10-day periods became 14-day periods — in effect maintaining the status quo in most instances. Similarly, periods shorter than 30 days were revised to be multiples of 7 days in order to reduce the likelihood of a deadline ending on a weekend. Additionally, time periods in a few federal rules were extended because the JCCRPP believed they were too short and impractical. See, e.g.

¹Specifically, the additional three (3) days apply to pleadings served pursuant to Fed. R. Civ. P. 5(b)(2)(C), (D), (E) or (F); it does not apply to pleadings served pursuant to Fed. R. Civ. P. 5(b)(2)(A) or (B) or to deadlines that run from the date of "filing" rather than "service." See LR 6.1.

Fed. R. Civ. P. 6(c)(adjusting time to serve motion and any affidavit supporting motion in opposition); Fed. R. Civ. P. 50, 52 & 59 (adjusting time to file certain post-trial motions); Fed. R. Civ. P. 54(d)(1)(adjusting timing of taxation of costs); Fed. R. Civ. P. 56 (establishing presumptive deadline for motions); Fed. R. Crim. P. 29, 33, and 34 (adjusting time to file certain post-trial motions and motion for judgment of acquittal); and Fed. R. Crim. P. 35 (adjusting deadline to file motion to correct technical errors in sentencing).

The time-computation rules were also amended to expressly make clear that the last day of a period for an electronic filing ends at midnight in the court's time zone.² Although the federal rules also provide that the last day for a paper filing ends when the clerk's office is scheduled to close, which is 5:00 p.m. local time in this district, the court has extended the midnight rule to paper filings submitted using the 24-hour night depository. See LR 6.1.

The amended federal rules also provide clearer guidance regarding filing deadlines when the clerk's office is deemed "inaccessible." The amended rules and the Committee Notes do not specify the meaning of "inaccessibility," which can vary depending on whether a filing is electronic or paper, leaving the definition to local rules and case law development. The time-computation amendments also provide for computing hourly time periods to address recent legislation affecting court proceedings in which deadlines are expressed in hours (e.g. 72 hours for action). Finally, the federal rules also now expressly make clear that the time-computation rules apply to "backward-looking time periods," which are rules that require some action be taken within a period of time *before* an event. (e.g. Fed. R. Civ. P. 26(f), which requires parties hold a Rule 26(f) conference as soon as practicable and in any event at least 21 days *before* the scheduling conference is held or a scheduling order is due). While the time computation rules may have applied to "backward-looking time periods" in the past, that fact was not expressly reflected in the rules and was likely not considered by many practitioners in the past.

To maintain consistency with the national rules and to avoid confusion, the JCCRPP asked courts to review their local rules and make similar adjustments. The JCCRPP recommended that, to the extent consistent with the spirit and intent of a specific local rule, any 5-day period should be lengthened to 7 days, any 10-day period should be lengthened to 14 days; and periods of less than 30 days should be revised to be a multiple of 7 days. (i.e., 15 day deadlines moved to 14 days and 20 day deadlines moved to 21 days).

The specific federal rules of civil and criminal procedure impacted by the new time-computation method are set forth below.³

²This district had already adopted the midnight filing deadline for electronically filed documents in AP 2.3(d). Because the midnight filing rule is now contained in the federal rules of procedure, the court has vacated AP 2.3(d).

³This informational memorandum does not address the time-computation changes made to the Federal Rules of Appellate Procedure or the Federal Rule of Bankruptcy Procedure.

FEDERAL CIVIL RULES IMPACTED BY TIME-COMPUTATION AMENDMENTS

As part of the time-computation project, the following civil rules were amended: Rules 6, 12, 14, 15, 23, 27, 32, 38, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Forms 3, 4, and 60. As stated, the amendment to Rule 6 simplifies and clarifies the general time-computation method. The amendments to the other rules adjust time periods consistent with the change to the time-computation method provided in Rule 6. The specific amendments are listed below:

- Fed. R. Civ. P. 6(c)(1): The 5 day period becomes 14 days.
- Fed. R. Civ. P. 6(c)(2): Time to provide opposing affidavit extended from 1 to 7 days before hearing.
- Fed. R. Civ. P. 54(d): Time period for clerk to tax costs extended from 1 to 14 days.
- Fed. R. Civ. P. 55(b)(2): Extends deadline for providing written notice of application for entry of default judgment from 3 to 7 days.
- Fed. R. Civ. P. 32(d)(3)(C), 54(d)(1), 81(c)(2)(C): Five-day periods become 7 days.
- Fed. R. Civ. P. 12(a)(4) & (e), 14(a)(1), 15(a)(3), 23(f), 38(b) & (c), 59(c), 62(a), 65(b)(2), 68(a) & (c), 72(a) & (b)(2), 81(c)(3)(B), Supplemental Rule C (6)(a)(i)(A): Ten-day periods become 14 days.
- Fed. R. Civ. P. 50(b) & (d), 52(b), 59(b), (d) & (e): Ten day periods become 28-day periods.
- Fed. R. Civ. P. 32(a)(5)(A): The less than 11 day period becomes less than 14 days.
- Fed. R. Civ. P. 12(a)(1)(A)-(C) & (f), 15(a)(1), 27(a)(2), 53(f)(2), 71.1(d)(2)(A)(v) & (e)(2), 81(c)(2)(A)(B), Forms 3 (Summons), 4 (Summons on Third Party Complaint), and 60 (Notice of Condemnation), and Supplemental Rules B(3)(a), C(6)(a)(iv) and G(4)(b)(ii)(C), (5)(b) and (6)(a) & (b): Twenty-day periods become 21 days.
- Fed. R. Civ. P. 6(b)(2) and 59(c). Rule 6(b)'s reference to provisions for extending the times set by enumerated provisions in Rules 50, 52, 59, and 60, and Rule 59(c)'s reference to a 20-day extension, are eliminated.
- Fed. R. Civ. P. 56(a), (b) & (c): The timing provisions in Rules 56(a), (b) and (c) are replaced by new provisions that recognize authority to set deadlines for summary judgment motions by local rule or by court order and, in default of a local rule or court order, that allow a motion to be made at any time until 30 days after the close of all discovery. The new provisions also establish default times for response (21 days) and reply (14 days). Note the court maintained the 30 days to object/respond to a motion for summary judgment contained in LR 7.1(b).

FEDERAL CRIMINAL RULES IMPACTED BY TIME-COMPUTATION AMENDMENTS

As part of the time-computation project, the following criminal rules were amended: Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 47, 58, 59, and Rule 8 of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 and 2255. As stated, the amendment to Rule 45 clarifies and simplifies the general time-computation method. The amendments to the other rules adjust

time periods consistent with the change to the time-computation method provided in Rule 45. The specific amendments are listed below:

- Fed. R. Crim. P. 47(c): Five days are extended to 7 days.
- Fed. R. Crim. P. 5.1(c), 7(f), 12.1(a)(2) & (b)(2), 12.3(a)(3) & (a)(4)(B)-(C), 29(c)(1), 33(b)(2), 34(b), 35(a), 41(e)(2)(A)(i), 58(g)(2)(A) & (B), 59(a) & (b)(2), and Rule 8 (b) of the Rules Governing Proceedings under 28 U.S.C. § 2254 and § 2255: Seven and 10 days are extended to 14 days.
- Fed. R. Crim. P. 5.1(c) and 12.3(a)(3) & (a)(4)(A): Twenty days are extended to 21 days.

LOCAL RULES IMPACTED BY TIME-COMPUTATION AMENDMENTS

While not all of the district's local rules have been amended consistent with the JCCRPP's recommendation, the amendments below reflect changes to local rule deadlines that accommodate both the JCCRPP's recommendation and the purpose and spirit of the local rule in question:

- LR 4.2(d): Objections to any filing fee ordered by the court shortened from 15 to 14 days.
- LR 7.1(b): Objection to motion deadline extended from 10 to 14 days; objections to motions for summary judgment remained at 30 days.
- LR 7.1(e)(1), (2) & (3): Following extended from 10 to 14 days: Deadline for reply brief to objection to dispositive motion; Motion for leave to file reply to objection to nondispositive motion; Motion to file surreply.
- LR 7.2(c) & (e): Following extended from 10 to 14 days: Motion to strike; Motion for reconsideration; Deadline for filing objection to magistrate judge ruling on reconsideration.
- LR 7.5(d): Deadline for nongovernmental corporate plaintiff, partnership plaintiff, or LLC plaintiff to file a disclosure statement are extended from 20 to 21 days.
- LR 9.1(c): Deadline for defendant to inform plaintiff in social security case of proposed additions or deletions to the joint statement shortened from 14 to 15 days.
- LR 9.3: All 10 and 15 day deadlines re-established to 14 days in local rule governing IDEA cases based upon 20 U.S.C. § 1415(i).
- LR 9.4: All 10 and 15 day deadlines re-established to 14 days in local rule governing ERISA claims based upon 29 U.S.C. § 1132(a)(1)(B).
- LR 37.1(b): Extends time to comply with discovery order from 10 to 14 days.
- LR 45.2(a): Deadline for in forma pauperis party to request subpoena or writ extended from 20 to 21 days.
- LR 54.1(a), (c) & (f): Time period for prevailing party to file bill of costs extended from 20 to 21 days; deadline for objection extended from 10 to 14 days; clerk shall now tax costs not less than 21 rather than 20 days; deadline for motion to review clerk's decision extended from 5 to 7 days.
- LR 72.2: Deadline to respond to another party's objection to order of magistrate judge on nondispositive matter extended from 10 to 14 days.

- LR 73.1(b)(2)(B): Deadline to object to case initially being assigned to the magistrate judge extended from 20 to 21 days.
- LR 77.4(c)(1) & (d): Review of bankruptcy court order on appeal and objection to recommendation on request for withdrawal of reference deadlines changed from 10 to 14 days.
- LR 81.1(a) & (c): Deadline for defendant to file answer or present other defenses or objections in removal action extended from 20 to 21 days if served prior to removal; deadline for removing party to file state court record extended from 10 to 14 days.
- LR 83.5, DR-10(c): Deadline for clerk to transmit copy of attorney discipline order to other known courts in which attorney is member of bar extended from 10 to 14 days.
- LR 83.13(d): Deadline to file agreed-upon designation of exhibits extended from 10 to 14 days. In absence of agreement, deadline for appellant to file designation of exhibits extended from 15 to 21 days and for appellee to file cross-designation extended from 10 to 14 days.
- LCrR 10.3: Deadline for counsel to confer to discuss discovery matters in criminal case extended from 5 to 7 days.
- LCrR 12.1(e): Extends deadline to object and file memorandum in opposition to a motion in a criminal case from 10 to 14 days.
- LCrR 16.1(d): Government deadline for disclosing Brady or Giglio material changed to 21 rather than 20 days prior to trial.

ECF ADMINISTRATIVE PROCEDURES IMPACTED BY TIME-COMPUTATION AMENDMENTS

The following amendment was made to the court's Administrative Procedures for Electronic Case Filing to satisfy the JCCRPP's recommendation to amend local rules and standing orders to be consistent with the spirit and intent behind the new time-computation rules:

AP 2.7(d): Deadline for objecting to authenticity of an electronically filed document changed from 10 to 14 days.